

YFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Huynh-Ba et al. )  
Filed: July 18, 2003 )  
Serial No.: 10/622,435 )  
Title: Magazine for Inventorying Reaction Cuvettes  
in an Automatic Analyzer )  
Attorney Docket: DCS-9179 )

APR 07 2006  
PATENT & TRADEMARK OFFICE  
U.S. DEPARTMENT OF COMMERCE

TRANSMITTAL LETTER

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear sir:

Enclosed please find for the above-referenced application:

- 1) A Request for Reconsideration of Holding of Abandonment (2pgs, <sup>3ccs</sup> fee);
- 2) Copy of Notice of Abandonment dated March 23, 2006 (2pgs, 1cc);
- 3) Copy of the timely filed Request for Continued Examination mailed on March 17, 2006 (6pgs, 1cc); and
- 4) A Return Postcard.
- 5) Copy of Transmittal for FY 2003 filed 7/18/03.

Respectfully submitted,



Robert N. Carpenter  
Registration No. 40,409  
Attorney for Applicant

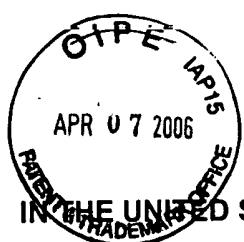
DADE BEHRING INC.  
1717 Deerfield Road #778  
Legal Dept. - Patents  
Deerfield, Illinois 60015-0778  
Telephone: 847-267-5351

CERTIFICATION UNDER 37 CFR 1.10

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 4 day of April, 2004.



Maria G. Salgado



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Huynh-Ba et al. )  
Filed: July 18, 2003 ) Group Art Unit: 1743  
Serial No.: 10/622,435 ) Examiner: Cross, Latoya  
Title: Magazine for Inventorying Reaction )  
Cuvettes in an Automatic Analyzer )  
Atty Docket No.: DCS-9179 )

**REQUEST FOR RECONSIDERATION**  
**OF HOLDING OF ABANDONMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice of Abandonment dated March 23, 2006, applicant hereby submits a copy of the timely filed Request for Continued Examination that was mailed on March 17, 2006 (with Certificate of Mailing) in response to the Final Rejection dated September 20, 2005.

In the event that the application was erroneously abandoned for failure to pay a three month extension of time, the applicants note that the Director is/was authorized to charge any fees to Deposit Account No. 04-0010 (see copy of Fee Transmittal for FY 2003 filed 7/18/03, attached hereto).

.....  
**CERTIFICATE OF MAILING**

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as First Class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 4 day of April 2006.

*Maria G. Salgado*  
Maria G. Salgado

Applicants believe no fee is due at this time. However, in the event that it is determined that a fee is due, please charge Deposit Account No. 04-0010. An original plus two copies of this letter are enclosed for accounting purposes.

Respectfully submitted,



Robert N. Carpenter  
Registration No. 40,409  
Attorney for Applicants

DADE BEHRING INC.  
1717 Deerfield Rd., Box 778  
Deerfield, IL 60015-0778  
Phone Contact: 847-267-5351  
Fax Contact: 847-267-5376



UNITED STATES PATENT AND TRADEMARK OFFICE

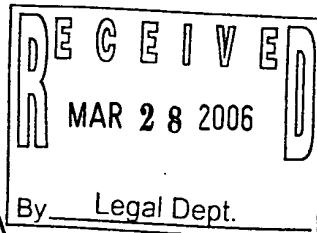
**COPY**

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,435	07/18/2003	Thai Huynh-Ba	DCS-9179	4957

34500 7590 03/23/2006

DADE BEHRING INC.  
LEGAL DEPARTMENT  
1717 DEERFIELD ROAD  
DEERFIELD, IL 60015



EXAMINER	
CROSS, LATOYA I	
ART UNIT	PAPER NUMBER
1743	

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



**Notice of Abandonment**

Application No.

10/622,435

Applicant(s)

HUYNH-BA ET AL.

Examiner

LaToya C. Younger

Art Unit

1743

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--*

This application is abandoned in view of:

1.  Applicant's failure to timely file a proper reply to the Office letter mailed on 20 September 2005.
  - (a)  A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b)  A proposed reply was received on 17 November 2005, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
 

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c)  A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d)  No reply has been received.
2.  Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a)  The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b)  The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.
 

The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c)  The issue fee and publication fee, if applicable, has not been received.
3.  Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a)  Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b)  No corrected drawings have been received.
4.  The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5.  The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6.  The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7.  The reason(s) below:

*M. J. Cole*  
MONIQUE T. COLE  
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



COPY

PLEASE DATE STAMP AND RETURN

Appl of: Huynh-Ba, et al.  
Serial No.: 10/622,435  
Filed on: July 18, 2003  
Title: Magazine for Inventorying Reaction Cuvettes in an  
Automatic Analyzer  
Atty Docket: DCS-9179

For the above-referenced application, enclosed please find:

- 1) Request for Continued Examination (RCE)  
Transmittal(1pg, 3cc);
- 2) Preliminary Amendment (4pgs, 1cc);

DADE BEHRING INC.

17 March, 2006 Via US Mail

LL1

PLEASE DATE STAMP AND RETURN

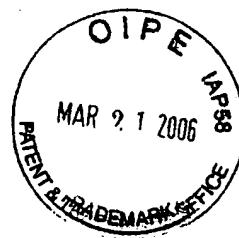
Appl of: Huynh-Ba, et al.  
Serial No.: 10/622,435  
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- 1) Request for Continued Examination (RCE)  
Transmittal(1pg, 3cc);
- 2) Preliminary Amendment (4pgs, 1cc);

DADE BEHRING INC.

17 March, 2006 Via US Mail





~~Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.~~

MADEWMA  
Request  
for  
Continued Examination (RCE)  
Transmittal

Address to:  
Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Application Number	10/622,435
Filing Date	July 18, 2003
First Named Inventor	Huynh-Ba, et al.
Art Unit	1743
Examiner Name	Cross, Latoya I.
Attorney Docket Number	DCS-9179

**This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.**  
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

a.  Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

i.  Consider the arguments in the Appeal Brief or Reply Brief previously filed on \_\_\_\_\_

ii.  Other \_\_\_\_\_

b.  Enclosed

i.  Amendment/Reply      iii.  Information Disclosure Statement (IDS)  
ii.  Affidavit(s)/ Declaration(s)      iv.  Other, Return Postcard

## 2. Miscellaneous

a.  Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)  
b.  Other \_\_\_\_\_

3

Fees

**Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.  
The Director is hereby authorized to charge the following fees, any underpayment of fees, or credit any overpayments, to  
a.  Deposit Account No. 04-0010 . I have enclosed a duplicate copy of this sheet.

i.  RCE fee required under 37 CFR 1.17(e)

Extension of time for (27 CFR 1.120 – 11.17)

iii.  Extension of time fee (37 CFR 1.166 and 1.177)  
iii.  Other \_\_\_\_\_

b.  Check in the amount of \$ \_\_\_\_\_ enclosed

c.  Payment by credit card (Form PTO-2038 enclosed)

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED			
Signature	<i>Robert Carpenter</i>	Date	3/17/06
Name (Print/Type)	Robert N. Carpenter	Registration No.	40,409

**CERTIFICATE OF MAILING OR TRANSMISSION**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Signature Susan Henderson Name (Print/Type) Susan Henderson Date 3/17/04

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Huynh-Ba et al.

Docket: DCS-9179

Filed: 18 July 2003

Group Art Unit: 1743

Serial No.: 10/622,435

Examiner: Cross, Latoya I.

Title: Magazine for Inventorying Reaction  
Cuvettes in an Automatic Analyzer

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**AMENDMENT AND RESPONSE UNDER 37 CFR 1.116**

This communication is in response to the Examiner's Advisory Action dated January 5, 2006. Applicants respectfully request entry of this amendment and reconsideration of the claimed invention.

**CERTIFICATE OF MAILING**

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as First Class mail in an envelope addressed to: MAIL STOP RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450, on this 17 day of March, 2006.

Susan Henderson  
Susan Henderson

Amendments to the Claims

1. (currently amended) A magazine for releasably inventorying a plurality of reaction cuvettes to be used in an automatic clinical analyzer, the magazine comprising a generally rectangular storage cell having curved front and back surfaces between a top and a bottom, and a number of storage chutes therein, each chute ~~sized to hold~~ having generally rectangular reaction cuvettes stacked one atop another therein, the storage chutes being defined by the front and back surfaces and a pair of opposing chute walls, each chute wall having two opposing pairs of ribs protruding therefrom and into the interior of each storage chute.
2. (original) The magazine of claim 1 wherein the front and back curved surfaces do not extend to the bottom of the magazine so that a number of cuvette ejection openings are formed at the front surface of the magazine between the chute walls.
3. (original) The magazine of claim 1 wherein a flat pad smaller than the storage chutes is formed at the lower extremity of each interior chute wall protruding into the interior space of the storage chutes.
4. (original) The magazine of claim 1 wherein a flat ledge smaller than the storage chutes is formed at the lower extremity of each exterior chute wall protruding therefrom and into the interior space of the storage chute.
5. (original) The magazine of claim 1 further comprising an alignment and locking band having two pairs of rails and two locking tabs formed on the exterior, lower portion thereof.
6. (original) The magazine of claim 1 further comprising a hinged gate proximate the bottom of the magazine, the gate spring-loaded by a hinge-spring on the curved front surface, the gate adapted to swing outwards from a closed position preventing reaction cuvettes from sliding out of the magazine to an opened position allowing reaction cuvettes to be ejected from the magazine.

## REMARKS

Claim 1 has been amended to specify that the magazine comprises a number of storage chutes, each chute having generally rectangular reaction cuvettes stacked one atop another therein.

### *Claim Rejections –35 USC §103*

Claims 3-10 are rejected under 35 USC 103(a) as being unpatentable over Link (US 6,098,819) in view of US Patent 6,321,609 to Mengel et al. As noted in previous communications, the Examiner states that it would have been obvious to use Mengel's curved walls where the stored cuvettes are roundly-shaped so that the cuvettes have a better fit in the magazine. The Examiner notes that MPEP 2144 states that rational different than Applicant's is permissible. MPEP 2144 however further emphasizes that "obviousness cannot be established without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done."

Mengel uses curved walls to store curved cuvettes; this is not a motivating force to use curved walls to store rectangular cuvettes. This motivating force which would impel one skilled in the art to use a rectangular magazine for a better fit for rectangular cuvettes. Neither is there a reasonable basis for expecting that curved walls are a logical fit for rectangular cuvettes. Since Mengel teaches the use of curved walls, inherently teaching against the use of rectangular walls, it would be illogical to employ Mengel's curved walls to house rectangular cuvettes. To make this distinction more clear, however, Applicant has amended claims 1 to require that the magazine chutes have generally rectangular reaction cuvettes stacked one atop another therein. Applicant thus believes that a rejection of his now-claimed invention over the combination of Link and Mengel is unsupported and should be withdrawn.

***Conclusion***

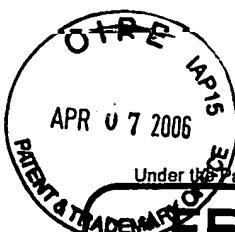
Applicant believes that this application contains patentable subject matter and that the foregoing amendments provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,



Robert N. Carpenter  
Registration No. 40,409  
Agent for Applicant

DADE BEHRING INC.  
Legal Department - Patents  
1717 Deerfield Road  
Deerfield, IL 60015-778  
Phone: 847.267.5351  
Fax: 847.267.5376



**COPY**

PTO/SB/17 (05-03)

Approved for use through 04/30/2003. OMB 0651-0032  
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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

# FEES TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

**TOTAL AMOUNT OF PAYMENT** (\$ 750.00)

**Complete if Known**

Application Number	
Filing Date	July 18, 2003
First Named Inventor	Huynh-Ba et al.
Examiner Name	
Art Unit	
Attorney Docket No.	DCS-9179

## METHOD OF PAYMENT (check all that apply)

Check  Credit card  Money Order  Other  None

Deposit Account:

Deposit Account Number 04-0010  
Deposit Account Name Dade Behring Inc.

The Director is authorized to: (check all that apply)

Charge fee(s) indicated below  Credit any overpayments  
 Charge any additional fee(s) during the pendency of this application  
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	2251 55	Extension for reply within first month	
1252 410	2252 205	2252 205	Extension for reply within second month	
1253 930	2253 465	2253 465	Extension for reply within third month	
1254 1,450	2254 725	2254 725	Extension for reply within fourth month	
1255 1,970	2255 985	2255 985	Extension for reply within fifth month	
1401 320	2401 160	2401 160	Notice of Appeal	
1402 320	2402 160	2402 160	Filing a brief in support of an appeal	
1403 280	2403 140	2403 140	Request for oral hearing	
1451 1,510	1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	2452 55	Petition to revive - unavoidable	
1453 1,300	2453 650	2453 650	Petition to revive - unintentional	
1501 1,300	2501 650	2501 650	Utility issue fee (or reissue)	
1502 470	2502 235	2502 235	Design issue fee	
1503 630	2503 315	2503 315	Plant issue fee	
1460 130	1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 750	2809 375	2809 375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 750	2810 375	2810 375	For each additional invention to be examined (37 CFR 1.129(b))	
1801 750	2801 375	2801 375	Request for Continued Examination (RCE)	
1802 900	1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify)

\*Reduced by Basic Filing Fee Paid

**SUBTOTAL (3) (\$)**

\*\*or number previously paid, if greater; For Reissues, see above

**SUBMITTED BY**

(Complete if applicable)

Name (Print/Type)	Robert N. Carpenter	Registration No. (Attorney/Agent)	40,409	Telephone	847-267-5351
Signature	<i>Robert N. Carpenter</i>			Date	7/18/03

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